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Rex Gene Foods and Local 1262, United Food and Commercial Workers Union, AFL-CIO, CLC.
Case 22-CA-22522

December 31, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Upon a charge filed by Local 1262, United Food and Commercial Workers union, AFL-CIO, CLC (the Union) on February 9, 1998 and amended on March 3 and June 18, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on June 26, 1998, against Rex Gene Foods, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On November 27, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On December 1, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated July 16, July 29, and August 11, 1998, notified the Respondent that unless an answer was received, a Motion for Summary Judgment would be filed. The Respondent did not file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation, with an office and place of business in Red Bank, New Jersey, and places of business in West Long Branch, Sayreville, Rahway, and Manalapan, New Jer-

sey, has been engaged in the operation of retail and wholesale grocery stores. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its West Long Branch, Sayreville, Rahway, Manalapan, and Red Bank, New Jersey facilities goods and materials valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about January 24, 1998, the Respondent, by its agent and supervisor Store Manager Anthony Rocco (Rocco), interrogated its employees about their union membership, activities, and sympathies, and made unspecified threats of retaliation if its employees supported the Union.

On or about January 26, 1998, at its Long Branch facility, the Respondent, by Rocco, interrogated its employees about their union membership, activities, and sympathies; threatened to close down its store if its employees supported the Union; and threatened its employees with loss of jobs if they supported the Union.

On or about January 27, 1998, at its Long Branch facility, the Respondent by Rocco, interrogated its employees about their union membership, activities, and sympathies, and told employees that an agent of the National Labor Relations Board was going to disclose the names of employees who signed cards for the Union and employee in-house organizers.

On or about a date currently unknown during the last week of January 1998, at its Long Branch facility, the Respondent, by Rocco, interrogated its employees about their union membership, activities, and sympathies; threatened to close down its store if its employees supported the Union; and threatened its employees with loss of jobs if they supported the Union.

On or about February 2, 1998, at its Long Branch facility, the Respondent by Rocco, interrogated its employees about their union membership, activities, and sympathies; threatened to close down its store if its employees supported the Union; and threatened its employees with loss of jobs if they supported the Union.

On or about February 3, 1998, at its Long Branch facility, the Respondent by Rocco, told employees that an agent of the National Labor Relations Board was going to disclose the names of employees who signed cards for the Union and employee in-house organizers.

On about February 6 and 7, 1998, at its Long Branch facility, the Respondent by Rocco, told employees that employee Margery Chulsky was discharged because of her union membership, activities, and sympathies.

On or about a date currently unknown during the second week of February 1998, at its Red Bank facility, the Respondent, by its agent and supervisor President Gene Casazza, interrogated its employees about their union membership, activities, and sympathies.

On or about a date currently unknown during the second week of March 1998, at its West Long Branch facility, the Respondent, by its agent and supervisor Assistant Store Manager Nelson, threatened employees with a cut in their scheduled hours and pay rate if employees supported the Union; threatened employees with taking away their ability to choose the hours that they work if employees supported the Union; and promised employees a raise if they voted for the Union.

The Respondent, by its agent and supervisor Accounts Payable Supervisor Marilyn Magistrado and by a supervisor whose first name is Delores at its West Long Branch facility, on or about a date currently unknown in late January or early February, 1998, and between February 6 and March 20, 1998, interrogated its employees about the union membership, activities, and sympathies of other employees.

On or about February 2, 1998, the Respondent issued two written warnings to its employee Margery Chulsky and on February 4, 1998, issued another written warning to Chulsky.

On or about February 4, 1998, the Respondent, by Casazza and its agent and supervisor Lisa LaMattina, detained Chulsky at its Red Bank facility against her express wishes.

On or about February 4, 1998, the Respondent discharged its employee Margery Chulsky.

The Respondent engaged in the conduct described above as to Chulsky because Chulsky joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act; discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization; and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by issuing warnings to and discharging Margery Chulsky, we shall order the Respondent to offer the discriminatee full reinstatement to her former job or, if that

job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and to make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful warnings and discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Rex Gene Foods, Red Bank, West Long Branch, Sayreville, Rahway, and Manalapan, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership, activities, and sympathies; making unspecified threats of retaliation if employees supported the Union; threatening to close down its store if employees supported the Union; threatening employees with loss of jobs if they supported the Union; telling employees that an agent of the National Labor Relations Board was going to disclose the names of employees who signed cards for the Union and employee in-house organizers; telling employees that Margery Chulsky was discharged because of her union membership, activities, and sympathies; threatening employees with a cut in their scheduled hours and pay rate if employees supported the Union; threatening employees with taking away their ability to choose the hours they work if employees supported the Union; and promising employees a raise if they voted for the Union.

(b) Issuing written warnings to employees, detaining them against their express wishes, and discharging them, all because they join or assist the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Margery Chulsky full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Margery Chulsky whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Margery Chulsky and the unlawful warnings issued to her, and within 3 days thereafter notify her in writing that this has been done and that the warnings and discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Red Bank, West Long Branch, Sayreville, Rahway, and Manalapan, New Jersey, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 24, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 1998

Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about their membership in activities on behalf of, and sympathies with United Food and Commercial Workers Union Local 1262, AFL-CIO, CLC.

WE WILL NOT make unspecified threats of retaliation if employees supported the Union.

WE WILL NOT threaten to close down our store if employees supported the Union.

WE WILL NOT threaten employees with loss of jobs if they supported the Union.

WE WILL NOT tell employees that an agent of the National Labor Relations Board was going to disclose the names of employees who signed cards for the Union and employee in-house organizers.

WE WILL NOT tell employees that Margery Chulsky was discharged because of her union membership, activities, and sympathies.

WE WILL NOT threaten employees with a cut in their scheduled hours and pay rate if employees supported the Union.

WE WILL NOT threaten employees with taking away their ability to choose the hours they work if employees supported the Union.

WE WILL NOT promise employees a raise if they voted for the Union.

WE WILL NOT issue written warnings to employees because they join or assist the Union or engage in concerted activities.

WE WILL NOT detain employees at our Red Bank facility against their express wishes because they join or assist the Union or engage in concerted activities.

WE WILL NOT discharge employees because they join or assist the Union and engage in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Margery Chulsky full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Margery Chulsky whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Margery Chulsky and the unlawful warnings issued to her, and within 3 days thereafter notify her in

writing that this has been done and that the warnings and discharge will not be used against her in any way.

REX GENE FOODS